

IT 95-66
Tax Type: INCOME TAX
Issue: Non-Filer (Income Tax)

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )      Docket No.  
OF THE STATE OF ILLINOIS      )      SSN  
      v.                        )  
XXXXXX                        )      John E. White,  
      Taxpayer                  )      Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before the Department of Revenue's ("Department's") Office of the Administrative Hearings as the result of a timely protest of a Notice of Deficiency ("NOD") by XXXXX ("taxpayer").1 The basis of the NOD was the Department's determination that taxpayer failed to report to the Department a final federal change in his adjusted gross income for the taxable year ending 12/31/82.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the Notice of Deficiency ("NOD"), which indicates that final changes were made to taxpayer's federal adjusted gross income which correspondingly increased his Illinois income tax liability. See NOD, Dept. File Ex. No. 1.

2. Taxpayer filed a timely Protest, in which he requested that the Department delay administrative proceedings until the challenge to the federal adjustment was complete. See Protest, Dept. File Ex. No. 2.

3. Taxpayer did not request a hearing. Id.

4. On February 16, 1994, the Department ascertained that taxpayer had applied income tax refunds toward taxpayer's federal income tax adjustment balance. See Dept. File Ex. No. 3.

5. Taxpayer did not file a return reporting the final federal change to the Department pursuant to Section 506 of the Illinois Income Tax Act ("IITA"). Ill.Rev.Stat. ch. 120, 5-506(b)(1981).

CONCLUSIONS OF LAW: Pursuant to 904(a) of the IITA, a Notice of Deficiency is prima facie evidence of the correctness of the amount of tax and penalties due. Ill.Rev.Stat. ch. 120, 5-904(a). Any person required to file an Illinois income tax return is required to notify the Department, within the time frame set by statute, of any final federal change which affects the computation of such person's base income. Ill.Rev.Stat. ch. 120, 5-506(b). In this matter, taxpayer failed to present any evidence to rebut the prima facie evidence of the Department.

The documentary evidence obtained by the Department indicated that taxpayer applied future federal income tax refunds toward the federal adjustment balance for the applicable period. I conclude that taxpayer's payments act as an admission that the federal adjustment had been finalized. Had there been some settlement or reduction in the change, it was taxpayer's statutory obligation to inform the Department of that finalized change by filing an amend return. He did not. Taxpayer, I conclude, is subject to the additional tax proposed in the NOD. I recommend that the Director finalize the Notice of Deficiency as issued.

Date Entered:

Administrative Law Judge

1 Although this matter is captioned under the names of the joint filers of the Illinois 1040 income tax return, I shall refer to the taxpayers throughout this decision using the third person singular.